

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.201: Rulings and determination letters.
(Also Part I, § 368)

Rev. Proc. 2005-68

SECTION 1. PURPOSE

This revenue procedure amplifies Rev. Proc. 2005-1, 2005-1 I.R.B. 1, which explains how the Service provides advice to taxpayers on issues under the jurisdiction of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions and Products), the Associate Chief Counsel (Income Tax and Accounting), the Associate Chief Counsel (International), the Associate Chief Counsel (Passthroughs and Special Industries), the Associate Chief Counsel (Procedure and Administration), and the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities).

This revenue procedure also amplifies Rev. Proc. 2005-3, 2005-1 I.R.B. 118, which

sets forth the areas of the Internal Revenue Code under the jurisdiction of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions and Products), the Associate Chief Counsel (Income Tax and Accounting), the Associate Chief Counsel (Passthroughs and Special Industries), the Associate Chief Counsel (Procedure and Administration), and the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) relating to issues on which the Internal Revenue Service will not issue letter rulings or determination letters.

SECTION 2. BACKGROUND

.01 Current Procedures

Section 7 of Rev. Proc. 2005-1 provides general instructions for requesting letter rulings and determination letters. Section 7.02(4) of Rev. Proc. 2005-1 states that the Service ordinarily processes requests for letter rulings in order of the date received, and that expedited handling is granted only in rare and unusual cases.

Section 8.05(1) of Rev. Proc. 2005-1 provides that if a ruling request lacks essential information, the branch representative will tell the taxpayer that the request will be closed if the Associate does not receive the information within 21 calendar days from the date the information is requested, unless an extension of time is granted.

Section 3.01 of Rev. Proc. 2005-3 outlines specific questions and problems on which the Internal Revenue Service will not issue rulings or determination letters. Section 3.01(31) of Rev. Proc. 2005-3 provides that the Service will not rule on whether a transaction qualifies under § 332, § 351 or § 1036 for nonrecognition treatment, or whether it constitutes a corporate reorganization within the meaning of § 368(a)(1)(A)

(including a transaction that qualifies under § 368(a)(1)(A) by reason of § 368(a)(2)(D) or § 368(a)(2)(E)), § 368(a)(1)(B), § 368(a)(1)(C), § 368(a)(1)(E), or § 368(a)(1)(F), and whether various consequences (such as nonrecognition and basis) result from the application of that section, unless the Service determines that there is a significant issue that must be resolved to decide those matters. If the Service determines that there is a significant issue, and to the extent the transaction is not described in another no-rule section, the Service will rule on the entire transaction, and not just the significant issue. Requests for rulings on whether a transaction constitutes an acquisitive corporate reorganization within the meaning of § 368(a)(1)(D) or § 368(a)(1)(G) or whether a transaction constitutes a corporate distribution under § 355 are not subject to the significant issue limitation.

Section 3.01(31) of Rev. Proc. 2005-3 further provides that a significant issue is an issue of law that meets the following tests: (1) the issue is not clearly and adequately addressed by a statute, regulation, decision of a court, tax treaty, revenue ruling, revenue procedure, notice, or other authority published in the Internal Revenue Bulletin; (2) the resolution of the issue is not essentially free from doubt; and (3) the issue is legally significant and germane to determining the major tax consequences of the transaction.

.02 New Procedures

The significant issue limitation set forth above is designed to increase the time available to the Service for processing letter rulings on transactions that involve the most difficult issues. Despite this willingness to rule on these transactions, the Service understands that taxpayers often execute transactions intended to qualify as reorganizations under § 368 that involve significant issues and distributions intended to qualify under § 355 without submitting letter ruling requests. Based on numerous

comments from taxpayers and their representatives, the Service has concluded that this practice is attributable, in part, to the length of time typically associated with the letter ruling process.

The Service believes that it can better serve taxpayers and more effectively administer the internal revenue laws by resolving these issues through the private letter ruling program. Accordingly, to encourage taxpayer participation in this program, Section 7.02(4) of Rev. Proc. 2005-1 is amplified to provide expedited treatment for letter rulings on transactions intended to meet the requirements of either § 368 or § 355 for which such treatment is requested pursuant to this revenue procedure, subject to the restrictions of Section 3.01(31) of Rev. Proc. 2005-3. Instead of the typical processing period, the Service will endeavor to complete and issue letter rulings on these transactions within ten weeks from receipt of the request. It is the intention of the Service to process on an expedited basis all letter ruling requests on these transactions, provided the requirements of this revenue procedure are met. If these requirements are not met, the Service will process the letter ruling request in the usual manner. If the transaction involves an issue or issues not entirely within the jurisdiction of the Associate Chief Counsel (Corporate), the ruling request will be processed in the usual manner unless each Associate Chief Counsel having jurisdiction over the transaction agrees to process the ruling request on the expedited basis provided herein.

Section 8.05(1) of Rev. Proc. 2005-1 is amplified to provide that if an expedited ruling request lacks essential information, the branch representative will tell the taxpayer that the information must be submitted within 10 calendar days from the date of the request for additional information, unless an extension of time is granted. If the information is not submitted within 10 calendar days (with any extension) but is submitted within 21 calendar days (with any extension), the ruling request will be

processed in the usual manner.

This revenue procedure also clarifies the term "significant issue," as defined in Section 3.01(31) of Rev. Proc. 2005-3, for all transactions to which the significant issue requirement applies, including transactions not being considered on an expedited basis.

This is a pilot program that applies to ruling requests postmarked or, if not mailed, received after September 14, 2005. This pilot program will be evaluated by the Service periodically.

SECTION 3. REQUEST FOR COMMENTS

The Service requests comments regarding the pilot program. Comments should refer to Rev. Proc. 2005-68, and should be submitted to:

Internal Revenue Service
P. O. Box 7604
Ben Franklin Station
Washington, DC 20044
Attn: CC:PA:RU
Room 5226

or electronically via the Service internet site at:

Notice.Comments@irs.counsel.treas.gov (the Service comments e-mail address). All comments will be available for public inspection and copying.

SECTION 4. PROCEDURE

.01 Rev. Proc. 2005-1 is amplified by adding the following sentence to the first paragraph of section 7.02(4):

Notwithstanding the previous sentence, expedited handling may be available for certain transactions intended to qualify as reorganizations described in § 368 or distributions described in § 355 as provided in Rev. Proc. 2005-68, Section 4.02.

.02 Rev. Proc. 2005-1 is amplified by adding the following paragraphs to section 7.02(4):

EXPEDITED LETTER RULING PROCESS FOR REORGANIZATIONS AND FOR DISTRIBUTIONS UNDER SECTION 355: If a taxpayer requests a letter ruling on whether a transaction constitutes a reorganization under § 368 or a distribution under § 355 and asks for expedited handling pursuant to this provision, the Service will grant expedited handling. If expedited handling is granted, the Service will endeavor to complete and issue the letter ruling subject to Section 3.01(3) of Rev. Proc. 2005-3 within ten weeks after receiving the ruling request. If the transaction involves an issue or issues not entirely within the jurisdiction of the Associate Chief Counsel (Corporate), the letter ruling request will be processed in the usual manner, unless each Associate Chief Counsel having jurisdiction over an issue in the transaction agrees to process the letter ruling request on an expedited basis.

To initiate this process, the taxpayer must (i) state at the top of the first page of the request letter: "Expedited Handling is Requested" and (ii) provide the Associate Chief Counsel (Corporate) with a copy of the request letter by facsimile transmission (fax), without attachments, when the formal request is submitted. The fax copy should be sent to (202) 622-7707, Attn: CC:CORP (Expedite). In due course, the taxpayer must also provide the Associate Chief Counsel (Corporate) with a draft ruling letter setting forth the relevant facts, applicable representations, and requested rulings in a manner consistent with the format used by the Associate Chief Counsel (Corporate) in similar cases. See section 7.02(3) of Rev. Proc. 2005-1. In addition, the taxpayer must ensure that the formal submission of its letter ruling request complies with all of the requirements of Rev. Proc. 2005-1 (including the requirements of other applicable guidelines set forth in Appendix E of Rev. Proc. 2005-1). See section 8.05(1) of Rev.

Proc. 2005-1 for a modified requirement regarding the submission of additional information. If the taxpayer does not satisfy the requirements of this paragraph, the letter ruling request will not be processed on an expedited basis, but instead will be processed in the usual manner.

.03 Rev. Proc. 2005-1 is also amplified by adding the following paragraph to section 8.05(1):

The Service will not endeavor to process a ruling request on the expedited basis provided by Rev. Proc. 2005-68, Section 4.02, unless the branch representative in Associate Chief Counsel (Corporate) receives all requested additional information within 10 calendar days from the date of the request for such additional information, unless an extension of time is granted. If the information is not provided within 10 calendar days (with any extension) but is provided within 21 calendar days (with any extension), the letter ruling request will cease to be processed on an expedited basis and instead will be processed in the usual manner.

.04 Rev. Proc. 2005-3 is amplified by adding the following sentence as the last sentence in the paragraph entitled "Significant Issue" in section 3.01(31):

An issue of law will be considered not clearly and adequately addressed by the authorities above, and its resolution will not be essentially free from doubt when, because of concern over a legal issue (as opposed to a factual issue), taxpayer's counsel is unable to render an unqualified opinion on what the tax consequences of the transaction will be.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2005-1, 2005-1 I.R.B. 1 and Rev. Proc. 2005-3, 2005-1 I.R.B. 118 are amplified.

SECTION 6. EFFECTIVE DATE

This revenue procedure applies to all ruling requests postmarked or, if not mailed, received after September 14, 2005.

SECTION 7. PAPERWORK REDUCTION ACT

The collections of information in this revenue procedure have been previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1522.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue tax law. Generally tax returns and tax return information are confidential, as required by § 6103.

SECTION 8. DRAFTING INFORMATION

The principal author of this revenue procedure is Emidio J. Forlini, Jr. of the Office of Associate Chief Counsel (Corporate). For further information regarding this revenue procedure contact Mr. Forlini at (202) 622-7930 (not a toll free call).